


Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

  
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**AUG 2 1995**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Broadband Personal Communications )  
Services C Block Auction and )  
Grant of A and B Block Licenses )

PP Docket No. 93-253  
ET Docket No. 92-100

To: The Commission

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**EMERGENCY MOTION<sup>1</sup> TO RESCHEDULE C BLOCK AUCTION  
OR REVIEW AND CONDITION GRANT OF A AND B BLOCK LICENSES**

The Rural Ad Hoc PCS Consortium (the "Consortium")<sup>2</sup>, by its attorneys, and pursuant to Sections 1.41 and 1.117(a) of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.117(a), respectfully submits this emergency motion requesting that the Commission immediately reschedule the Personal Communications Services ("PCS") C Block auction or, alternatively, for the Commission on its own motion to order a review of the grant of PCS licenses for the A and B Block and condition these licenses such that their grant date coincides with the date of licensing of the first C Block license. In support of which the following is shown:

On July 27, 1995, the Commission postponed the short-form application (i.e., FCC Form

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<sup>1</sup> Since this motion is filed on August 2, 1995, the last date for the Commission to order the review of the grant of the PCS A and B Block licenses on its own motion -- an alternative relief requested herein -- the Consortium requests expedited consideration of this filing as an emergency motion.

<sup>2</sup> The Consortium consists of a number of small rural businesses which intend to participate in the PCS C Block auction, including but not limited to Saginaw Chippewa Telecommunications, South Carolina Personal Communications Network, Wireless 2000, and Council Grove Telephone Co., as well as their consulting engineer, Associated Communications & Research Services, Inc., and the Alaska Telephone Company.

175) filing date for the auction of the 493 Basic Trading Area ("BTA") C Block PCS licenses in response to a stay, issued by the U.S. Court of Appeals for the District of Columbia Circuit, of one of the Commission's PCS rules.<sup>3</sup> The Stay Order stayed the effectiveness of "[t]hose portions of the Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Sixth Report and Order, 60 Fed. Reg. 37786 (July 21, 1995) [the "Sixth Report and Order"], allowing all applicants to utilize the 49 percent equity exception," pending judicial review. See Stay Order at 1.

The Stay Order did not, however, specifically require the Commission to postpone the auction, but rather only stayed the effectiveness of a portion of one of several rules adopted in the Sixth Report and Order.<sup>4</sup> Specifically, the Court of Appeals stayed the effectiveness of the rule by which the Commission allowed all C Block applicants to use the "Control Group Minimum 50.1 Percent Equity Option," whereas before the rule change only women-owned or minority-owned applicants were eligible to use that ownership structure option. See Sixth Report and Order at ¶ 16 (codified at 47 C.F.R. § 24.709(b)(6)).

The Consortium agrees with Chairman Hundt that every day that the C Block auction is delayed "will hurt competition, cost consumers and threaten opportunities for small businesses"

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<sup>3</sup> See Public Notice, released July 27, 1995 (citing Omnipoint Corporation v. FCC, No. 95-1374 (D.C. Cir. 1995)(Order Granting Motion for Stay, July 27, 1995), hereinafter the "Stay Order").

<sup>4</sup> But see Stay Order at 1 (ordering generally that "the emergency motion for stay be granted"). Although the Emergency Motion for Stay filed by the petitioner, Omnipoint Corporation ("Omnipoint"), included a request for a stay of the July 28, 1995 short-form application deadline, by its plain language the Stay Order is limited to a stay of the effectiveness of the 49% equity exception, the sole portion of the Sixth Report and Order and rules which is subject to judicial review.

that seek to participate in PCS via a C Block license, and that every possible avenue should be pursued to get the C Block auction back on track.<sup>5</sup> Accordingly, the Consortium asserts that the Commission must reschedule the short-form application filing date as soon as possible, and begin the auction on the originally scheduled date of August 29, 1995, or as soon as possible thereafter. The Commission may take this action without violating the Stay Order by conditioning the eligibility of bidders which avail themselves of the Section 24.709(b)(6) "Control Group Minimum 50.1 Percent Equity Option," and conditioning the results of the auction for any C Block license on which such an applicant is the highest bidder, on the outcome of the judicial review of that rule.

This solution would serve the public interest by allowing the C Block auction to proceed as quickly as possible and under the best terms possible, pursuant to the Stay Order, and thereby speed the arrival of viable competition to the wireless marketplace, with the resultant benefits of greater choices and lower prices for consumers. Many applicants do not plan to rely on, or do not necessarily need to rely on, the 49% equity exception.

Moreover, the eligibility for and outcome of the auction will not change for those applicants that must rely on the 49% equity exception in order to participate in the auction -- if they elect to rely on the exception in anticipation that the rule is upheld, either (i) the rule will be upheld by the Court of Appeals, and their participation in the auction in reliance on the exception will be validated, or (ii) if the rule is overturned, such applicants would not have been eligible in the first instance. The only parties that may be adversely affected would be parties

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<sup>5</sup> See Statement of Reed E. Hundt, Chairman, Federal Communications Commission, Regarding Court Stay of PCS Entrepreneurs' Block Auction (released July 27, 1995).

which have the option to participate either under an ownership structure which relies on the exception or a structure which does not; however, the Consortium notes that such parties have made such a business decision well aware of the possible risks of their choice of ownership structure.

If the Commission grants this emergency motion and proceeds with the auction, two outcomes are possible. In the best case, if the Court of Appeals ultimately upholds Section 24.709(b)(6), the results of the auction would not be affected for all applicants, including the applicants which choose to rely on the 49% equity exception, and the public benefits from the earlier licensing of the C Block. In the worst case, if the Court of Appeals ultimately overturns Section 24.709(b)(6), some successful bidders may not be eligible to receive the license on which they were the high bidder -- again, entities that would not be eligible to bid even if the auction were delayed and the rule overturned, or that made a conscious business decision to structure their entity in reliance on the 49% equity exception despite the risks -- and those licenses would have to be re-auctioned.<sup>6</sup> Even under the worst case, the licenses to be re-auctioned would be licensed at least as quickly as if the entire auctioned were delayed until the judicial review process was completed.<sup>7</sup>

In the event that the Commission chooses not to reschedule the short-form filing date and

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<sup>6</sup> The Consortium suggests that in that instance, it would be equitable if the Commission waived the default penalties for which those entities would otherwise be liable.

<sup>7</sup> To the extent that some licenses must be re-auctioned, bidders may lose some flexibility to bid on combinations of licenses from among all licenses. However, such an adverse affect would be minimal since these entities would have had an opportunity to pursue their bidding strategy during the initial auction. Moreover, the Consortium submits that the public interest benefit of holding the auction earlier would greatly outweigh such a limited potential adverse affect.

auction as requested above, but rather chooses to await completion of judicial review of the 49 percent equity exception, the Consortium asserts that the Commission should reconsider, on its own motion, the grant of PCS licenses for the A and B Blocks, and condition such grants such that the grant date for those licenses will coincide with the date of licensing of the first C Block license.<sup>8</sup> Such an action would serve the public interest by ensuring that the C Block PCS licensees will have the opportunity to develop as viable competitors in the PCS marketplace, an opportunity which may well be precluded if the Commission allows a lengthy delay between the licensing of the A and B Block licensees and the C Block licensees -- a "headstart" that may well prove insurmountable and frustrate the very purposes for which the C Block was allocated.

The Wireless Telecommunications Bureau granted the A and B Block PCS licenses on, and effective as of, June 23, 1995. See Applications for A and B Block Broadband PCS Licenses, File Nos. 00001-CW-L-95 through 00099-CW-L-95, Order, DA 95-1411 (released June 23, 1995); see also 47 C.F.R. § 1.102(b)(1). The Commission may, on its own motion, order the review of any action taken pursuant to delegated authority within forty days after public notice is given of such action, and may reverse or modify any such action taken. See 47 C.F.R. § 1.117. Accordingly, the Commission may order the review of the grant of the PCS licenses for the A and B Block, on its own motion, on or before August 2, 1995.

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<sup>8</sup> Although the Commission has previously considered whether to defer licensing of the A and B Block until the C Block auction is initiated or completed, see, e.g., Deferral of Licensing of MTA Commercial Broadband PCS, PP Docket No. 93-253, ET Docket No. 92-100, Order, DA 95-806 (released April 12, 1995), and Memorandum Opinion and Order, DA 95-1410 (released June 23, 1995), the Consortium submits that the additional and indefinite delay that may be imposed by the Stay Order, in the absence of a rescheduled auction subject to the outcome of the judicial process as proposed herein, merits a new review of the issue by the Commission.

In the event that the Commission declines to promptly reschedule the date for filing the short-form application, and proceed with the C Block auction as originally scheduled, the Consortium reserves the right to seek a stay of the effectiveness of the grant of the A and B Block licenses from the Court of Appeals, based on the irreparable harm and injury that would likely be suffered by the C Block applicants and licensees due to a delay in the C Block auction and licensing.

WHEREFORE, the above premises being considered, the Consortium respectfully requests that this emergency motion to reschedule the PCS C Block auction be granted or, alternatively, that the Commission reconsider on its own motion the grant of PCS licenses for the A and B Block and to condition such grants such that the grant date will coincide with the date of licensing of the first C Block PCS license.

Respectfully submitted,

**AD HOC RURAL PCS CONSORTIUM**

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August 2, 1995

**CERTIFICATE OF SERVICE**

I, Laura Ann Campbell, hereby certify that on this 2nd day of August, 1995, copies of the foregoing "EMERGENCY MOTION TO RESCHEDULE C BLOCK AUCTION OR REVIEW AND CONDITION GRANT OF A AND B BLOCK LICENSES" have been served by hand delivery upon the following:

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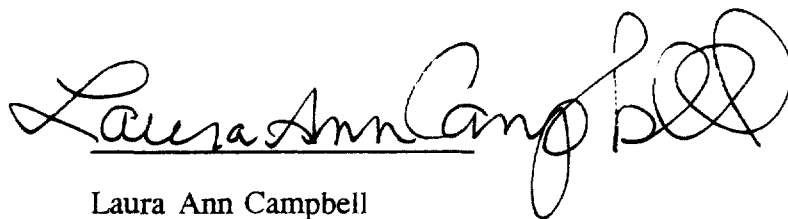
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